

# Exhibit 30

*United States of America ex rel. Ven-a-Care of the Florida Keys, Inc. v. Boehringer Ingelheim Corp. et al.*

Civil Action No. 07-10248-PBS

Exhibit to the August 28, 2009 Declaration of James J. Fauci In Opposition To  
Corrected Boehringer Ingelheim Corporation and Boehringer Ingelheim Pharmaceuticals, Inc.  
Local Rule 56.1 Statement of Undisputed Material Facts  
in Support of Their Motion For Summary Judgment

NO. CV3-03079

THE STATE OF TEXAS

IN THE DISTRICT COURT OF

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THE STATE OF TEXAS

ex rel.

VEN-A-CARE OF THE  
FLORIDA KEYS, INC.

Plaintiffs,

vs

TRAVIS COUNTY, TEXAS

ROXANE LABORATORIES, INC.,  
BOEHRINGER INGELHEIM  
PHARMACEUTICALS, INC.,  
BEN VENUE LABORATORIES, INC.,  
and BOEHRINGER INGELHEIM  
CORPORATION

Defendants.

201st JUDICIAL DISTRICT

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VIDEOTAPED DEPOSITION OF JIM KING

Taken before Lori Miller, Licensed Shorthand  
Reporter, a Notary Public in and for the State of  
Connecticut, pursuant to Notice and the Connecticut Practice  
Book, at The Inn at Ethan Allen, 21 Lake Avenue Extension,  
Danbury, Connecticut, on December 3, 2004, commencing at 9:30  
a.m.

1 APPEARANCES:

2  
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22  
23  
24  
25

1 whether or not it was a federal or state proceeding. Do  
2 you remember whether it was a criminal or civil  
3 proceeding?

4 A It was a criminal proceeding.

5 Q And was that the prosecution of a gentleman  
6 named Neil Yager.

7 A Yes, it was.

8 Q Do you recall how long you testified; was it a  
9 day or several days?

10 A It was probably about 20 minutes. Yes, it was  
11 one day, and it was about 20 minutes to 25 minutes,  
12 something like that. It was reasonably short.

13 Q And you were there on behalf of Boehringer  
14 Ingelheim Pharmaceuticals, Inc.?

15 A Yes.

16 Q Who are you currently employed by?

17 A Boehringer Ingelheim Pharmaceuticals.

18 Q And what is your title with the company?

19 A Head sales operations.

20 Q How long have you been with that company?

21 A Thirty years.

22 Q I believe you started in 1974?

23 A '74.

24 Q You started as a sales representative,  
25 correct?

1 A Yes, ma'am.

2 Q Have you always been in sales ever since you  
3 joined the company?

4 A Sales or marketing.

5 Q And how long have you been in your present  
6 position?

7 A Two years.

8 Q Do you have any plans to retire at this time?

9 A I'm retiring December 31st.

10 Q And how long has your retirement been  
11 announced?

12 A About three weeks, I believe.

13 Q And what are your plans after your retirement?

14 A I'm not real sure right now. Take it easy for  
15 awhile, and I don't know, maybe I'll find a part-time  
16 job somewhere else. I'm not sure.

17 Q When you retire, do you plan to move from your  
18 present residence?

19 A No. Not in the near term, anyway.

20 Q Do you plan to take any extensive vacations,  
21 trip around the world, anything like that?

22 A Not that either; maybe a couple weeks here and  
23 there.

24 Q How would you we be able to get in touch with  
25 you after you retire?

1 A No, I did not.

2 Q When you were the head of sales at Boehringer  
3 Ingelheim Pharmaceuticals, Inc., I believe you held that  
4 position from August of 1999 until May 2000?

5 A Yes. Just a comment: These are my  
6 recollections of the dates. They're reasonably close to  
7 the months, et cetera, but they're just my recollection.  
8 This is my personal resume.

9 Q And were you responsible for the sales force  
10 of the sister company Roxane Laboratories during that  
11 period of time when you were the head of the sales?

12 A Yes, for the branded part of the line, yes, I  
13 was.

14 Q And in that capacity, did you supervise two  
15 sales directors at Roxane Labs?

16 A That's correct.

17 Q And who were those two sales directors?

18 A Mark Schaffer and Jerry Hart.

19 Q And did you also supervisor a sales training  
20 group at Roxane Labs?

21 A Yes, I did. It was one person.

22 Q Who was that?

23 A Fiona McKenna was her name.

24 Q And where were these folks located that you  
25 were supervising?

1 can't recall what you said, when you were filling that  
2 position before he came in, did you have  
3 responsibilities to Roxanne?

4 A No, I did not.

5 MS. O'KEEFFE: I'm going to ask the court  
6 reporter to mark an exhibit.

7 (Plaintiff's Exhibit King No. 101,  
8 Roxanne Laboratories organizational chart,  
9 marked for Identification.)

10 BY MS. O'KEEFFE:

11 Q Mr. King, I'm going to hand you what the court  
12 reporter has marked Plaintiff's Exhibit King 101, and  
13 the Bates label for the record on this is Rox-01438.

14 Mr. King, you can hand that extra copy to  
15 Roxanne's counsel so they can take a look at that while  
16 we discuss it.

17 Does this appear to be an organizational  
18 chart?

19 A Yes, ma'am.

20 Q And is it labeled Roxane Laboratories, Inc.,  
21 budget 1999?

22 A That's what the label is, yes.

23 Q And I believe it indicates in the box  
24 president and COO Roxanne, W. Gerstenberg.

25 A That's correct.

1 Q Is that Warner Gerstenberg?

2 A That's correct.

3 Q And in 1999, he was the president and COO of  
4 Roxanne Laboratories; is that correct?

5 MR. WINGARD: Object to the form.

6 A I'm not sure that's correct. He was the  
7 president and either COO or CEO of Boehringer Ingelheim  
8 Corporation, and as such was the head of Roxanne. But I  
9 believe Roxanne had their own president.

10 Q So, to your knowledge, this organizational  
11 chart is wrong?

12 A I would say, yes. I don't think was the  
13 president of Roxane Laboratories. He was a president of  
14 Boehringer Ingelheim Corporation.

15 Q Who do you believe was president Roxanne  
16 Laboratories in 1999?

17 A I'm thinking Jerry Volda (phonetic), but that  
18 may have been right after his time. I believe that Kirk  
19 Shepard held that position for a little awhile after  
20 Jerry Volda left, and I'm not sure of the time involved,  
21 the time window.

22 Q Was he responsible for preparing such an  
23 organizational chart, do you know?

24 MR. WINGARD: Objection to form.

25 A I really don't. I really don't know.



1 Laboratories and Ben Venue?

2 A That wasn't my memory of it. My memory of it  
3 is Shelly Berkle was responsible for the Ethical  
4 Pharmaceutical part. This chart is not my memory of how  
5 the way it worked.

6 Q But you do agree that this chart reflects,  
7 that both the multisource and the branded products for  
8 both, or for BIPI, Ben Venue, and Roxanne, are all  
9 encompassed within the business unit Ethical  
10 Pharmaceuticals?

11 A That's what this chart describes.

12 MR. WINGARD: Objection to form.

13 BY MS. O'KEEFFE:

14 Q Mr. King, do you have any explanation for why  
15 your position is on an organizational chart that depicts  
16 Roxane Laboratories' budget in 199?

17 MR. WINGARD: Objection form.

18 A No, I don't, really

19 BY MS. O'KEEFFE:

20 Q To your knowledge, was any portion of your  
21 salary paid by Roxane Laboratories?

22 A It was not.

23 Q Was any portion of your salary allotted to  
24 Roxane Laboratories' budget?

25 A No, it was not.

1 Q Do you see just below the box with  
2 Mr. Russillo's name the box immediately below that which  
3 shows manager of multisource products, Judy Waterer, or  
4 J. Waterer?

5 A Yes, I do.

6 Q And, to your knowledge, she did hold that  
7 position in 1999?

8 A I really couldn't say, but according to this  
9 chart, that's what it says.

10 Q Okay. To your knowledge, did Sheldon Berkle  
11 supervise those who were selling and marketing both  
12 Boehringer Ingelheim Pharmaceuticals and Roxane drugs?

13 A That wasn't my memory of it, except for the  
14 Roxanne on the branded side.

15 Q And when you say the branded side, what are  
16 you referring to?

17 A Basically the palliative products for Roxane  
18 and the Viramune product, Viramune, Roxane's Viramune,  
19 and all of the BIPI products.

20 Q And when you say branded drugs, do you mean  
21 drugs that Roxane actually held a patent on?

22 A I don't think that's the right way, I don't  
23 think that's the way I would put it. I would say drugs  
24 that we promoted in the doctor's office to be prescribed  
25 under the brand name.

1 Q Would that include Marinol?

2 A Yes, it would.

3 Q Oramorph?

4 A Yes.

5 Q Roxicet?

6 A I'm not sure Roxicet was part of it.

7 Q Roxicodone?

8 A Roxicodone probably was.

9 Q Can you think of any other palliative care  
10 drugs that would fall in this branded category?

11 A Not off of the top of my head I can't.

12 Q Could you explain to the what Marinol is?

13 A Is this the jury?

14 Q Yes. This will be played to the jury.

15 A Marinol. It's quite sometime ago now, I'm  
16 dredging this out of my memory. I believe Marinol was  
17 an appetite enhancing drug for people suffering from  
18 AIDS.

19 People who suffer from AIDS have a tendency to  
20 lose a lot of weight and they get very thin, and it's  
21 not healthy for them. And Marinol was an appetite  
22 increasing, somehow it increased the appetite and let  
23 these people eat more, and therefor they were healthier.  
24 That's what I recall.

25 Q Are you aware that the main ingredient of

1 the relator, I have to respond by saying  
2 that you have the ability to assert the  
3 privilege using the snap back provision.

4 However, we are preserving our  
5 rights subject to adjudication of whether or  
6 not a privilege exists, to re-notice  
7 Mr. King's deposition and depose him as to  
8 these provisions which have now been  
9 redacted.

10 MR. WINGARD: So noted.

11 BY MS. O'KEEFFE:

12 Q Mr. King, did you indicate you had an  
13 opportunity to look at King Exhibit --

14 A Yes, ma'am.

15 Q -- No. 103?

16 Okay. I'd like to ask you a few questions  
17 about it.

18 Does this appear to be a report of a pricing  
19 committee in 1997?

20 A Yes, ma'am.

21 Q And it's listed on Boehringer Ingelheim  
22 stationery, correct?

23 A That's correct.

24 Q And you are the author of this pricing  
25 committee report, correct?

1           A       Yes, I am.

2           Q       Now, why were you the author of this report?

3           A       I'm not 100 percent clear on why. I was  
4 probably the chair of this ad hoc pricing committee, and  
5 as such was the author of the report back to my boss,  
6 Shelly Berkle.

7           Q       Do you recall when this pricing committee was  
8 established?

9           A       No, I do not.

10          Q       The date on this document is May 30th, 1997.  
11 Do you believe that this could possibly be the first  
12 report of that committee?

13          A       I really don't know. I'm sorry.

14          Q       The names listed under the caption list, at  
15 the bottom of the document, starting with Shelly Berkle,  
16 are these the people who were present at the meeting?

17          A       I do not believe so.

18          Q       Are these the people who were on the pricing  
19 committee?

20          A       No, they were not.

21          Q       And how do you know that?

22          A       Shelly Berkle would never have attended a  
23 committee like this. He would have delegated the  
24 committee chair to me. And Phil Franks would never have  
25 attended. Other than that, I'm not sure, but those two

1 were not on the committee.

2 Q Okay. But do you recall was on the committee?

3 A I don't really recall, but I'm just making an  
4 assumption that it would have been Judy Waterer, Ken  
5 Gross, Dan Gerrity, Bruce Banks, and myself.

6 Q So, your belief is the committee was comprised  
7 of everyone, yourself and everyone on the list, except  
8 for Shelly Berkle and Phil Franks, correct?

9 MR. WINGARD: Objection to form.

10 A That would be an assumption on my part, yes.  
11 BY MS. O'KEEFFE:

12 Q Could you please go through the list and tell  
13 me, starting with Shelly Berkle, and to your best  
14 recollection in 1997 what company or companies he worked  
15 for and what his position was?

16 A Shelly Berkle was executive vice president of  
17 BIPI, B-I-P-I, head of our ethical business unit.

18 Q And did he work for any other Boehringer  
19 Ingelheim companies at that time, to you knowledge?

20 A Not to my knowledge, no.

21 Q How about Judy Waterer?

22 A She was a Roxane employee.

23 Q And what was her title?

24 A I really don't know.

25 Q What was her basic job responsibility as you

1 understood it?

2 MR. WINGARD: Objection to form.

3 A I'm really not clear what Judy did. She  
4 worked for Roxanne in the multisource side, I don't  
5 know.

6 BY MS. O'KEEFFE:

7 Q Do you know if she had responsibility for  
8 marketing multisource products for Roxane?

9 MR. WINGARD: Objection to form.

10 A I really don't know.

11 BY MS. O'KEEFFE:

12 Q How about Ken Gross?

13 A Ken Gross was a BI employee, a BIPI employee,  
14 and he was the head of our managed care operation.

15 Q Was that a sales function or a marketing  
16 function?

17 A Marketing function.

18 Q And what about Dan Gerrity?

19 A Dan was a BIPI employee, and I believe he had  
20 something to do with contracting.

21 Q Do you know, was he head of contracts?

22 A I really don't know, I'm sorry.

23 Q What about Chris Ferraro?

24 A I've known Chis for a long time. What she was  
25 doing in '97, I really don't know.

1 Q Do you know what company she was working for?

2 A She was a BIPI employee.

3 Q You don't have any earthly idea why she would  
4 have been on the pricing committee?

5 A I really don't. I'm sorry.

6 Q What about Bruce Banks?

7 A He was a legal counsel.

8 Q And what company did he work for?

9 A BIPI, I believe.

10 Q And what about Phil Franks?

11 A Phil was our general counsel and as such  
12 probably -- he was our general counsel for the  
13 corporation.

14 Q And what was that corporation?

15 A BIC, Boehringer Ingelheim Corporation.

16 Q And is that the parent corporation of  
17 Boehringer Ingelheim Pharmaceuticals, Inc.?

18 A Yes, I believe so.

19 Q And also the parent of Roxane Laboratories,  
20 Inc.?

21 A Yes, ma'am.

22 Q And also the parent of Ben Venue, Inc.?

23 MR. WINGARD: Objection to form.

24 A I'm not sure it was in '97, I don't have a  
25 good handle on the time windows involved. But Ben



1 Venue, if they were in existence with us, then would  
2 have reported to the corporation, BI Corporation.

3 Q Just so I'm clear, Mr. Banks was legal counsel  
4 with Boehringer Ingelheim Pharmaceuticals, Inc., and to  
5 your recollection Phil Franks was general counsel for  
6 the parent company. Is that correct?

7 A To the best of my recollection, yes, ma'am.

8 Q With regard to the second page of the exhibit,  
9 which is actually numbered page one, and for the record,  
10 it's Paoletti Bates No. 03604.

11 I'd like you to look at the very top  
12 paragraph, titled objective, and could you please read  
13 that short --

14 A Review ongoing pricing litigation -- out loud,  
15 ma'am?

16 Q Yes.

17 A Review ongoing pricing litigation, review  
18 BIBI's RLI's current pricing and customers. Tender a  
19 proposal for future models regarding class of trade and  
20 pricing. Provide recommendations concerning the legal  
21 implications of integration of RLI and BIPI on pricing  
22 issues.

23 Q Does it appear that it was the objective of  
24 the pricing committee to review Roxanne and BIPI pricing  
25 issues in that recommendations about Roxane and BIPI

1 pricing issues?

2 A That's what it appears, yes, ma'am.

3 Q Now, if you could please turn to the third  
4 page exhibit, Paoletti 03605, and -- actually, I'll ask  
5 you to turn to the very next page, Paoletti 03606.

6 And under the paragraph marked BIPI/RLI future  
7 status that would refer to Boehringer Ingelheim  
8 Pharmaceuticals, Inc., and Roxane's future status,  
9 correct?

10 A I have that, yes.

11 Q Beginning with the second sentence that starts  
12 with attention, could you please read the rest of that  
13 paragraph?

14 A Attention needs to be paid by BIPI/RLI to  
15 identify which customers compete with which customers  
16 and price our products in a similar fashion to each of  
17 these competitive classes to maximize profitability  
18 and/or market share without running afoul of the  
19 antitrust statutes.

20 We prepared three appendices which describe  
21 what we believe are three major classes of entities from  
22 which time to time may compete. However, there are  
23 permutations of each class that must be clearly known to  
24 all operational contracting entities before entering  
25 into agreements.

1 Continue?

2 Q No, you can stop there.

3 Mr. King, was the focus here in this meeting  
4 on developing a way to identify BIPI and Roxane  
5 customers that competed with each other and to offer  
6 them similar pricing on the same products?

7 A I'm not sure I understand the question.

8 Q Okay.

9 A Come again, please.

10 Q Would you like to have the question repeated?

11 A Yes, repeat it for me again, please.

12 MS. O'KEEFFE: Could the court reporter  
13 please read the question back?

14 (Pending question read.)

15 MR. WINGARD: Object to form.

16 A I'd of to split on this question, I'd have to  
17 split my answer into two parts. It would be the BIPI  
18 side to identify customers that compete with each other  
19 and offer them similar pricing on the branded part of  
20 our business.

21 And it would have been Roxane's, I believe, to  
22 do a similar sort of thing with products that were on  
23 the generic, or multisource side of the business.

24 But our pricing for those two separates  
25 segments, it would be our objective to attempt to

1 attorney/client communication, had been  
2 brought to our attention earlier.

3 MR. ANDERSON: Not to go round and  
4 round, but of course you realize that we are  
5 disagreeing, first, that any such burden  
6 exists on the receiving party, and,  
7 secondly, that we could even be capable of  
8 perceiving that you might assert privilege  
9 to this document.

10 I recognize that you may disagree  
11 with me on this; I'm just stating our  
12 opposition on the record.

13 MR. WINGARD: Okay.

14 BY MS. O'KEEFFE:

15 Q Mr. King, this morning we discussed the  
16 pricing committee meeting that occurred in May of 1997.  
17 Do you recall that?

18 A I'm not sure, just as a clarification, I'm not  
19 sure the meeting actually occurred. That's when that  
20 paper was written.

21 Q Okay. So --

22 A Yes, I do recall the issue.

23 Q And do you recall that there was a pricing  
24 committee in existence in May of 1997 --

25 A Yes, ma'am.

1 Q -- at Boehringer Ingelheim Pharmaceuticals,  
2 Inc.?

3 A Yes, ma'am.

4 Q And do you recall that that pricing committee  
5 you acted as the head of that committee for awhile?

6 A Yes. The chair, yes.

7 Q And that there were representatives from both  
8 Roxane and Boehringer Ingelheim Pharmaceuticals, Inc.,  
9 on that committee; is that correct?

10 A Yes, ma'am.

11 Q Can you recall some of the names of the people  
12 who were on that committee?

13 A Dan Gerrity, Judy Waterer, Bruce Banks,  
14 myself, Ken Gross. I believe that's does it.

15 Q And which of those parties were employed by  
16 Roxanne?

17 A I believe Judy Waterer was employed by  
18 Roxanne, and I think that's it.

19 Q And Bruce Banks was legal counsel for what  
20 entity?

21 A I believe BIPI.

22 Q And Phil Franks was general counsel for  
23 what --

24 A I believe Phil was the general counsel for the  
25 entire corporation.

1 Q And are you referring to Boehringer Ingelheim  
2 Corporation?

3 A Yes, ma'am.

4 Q And is that the parent of both Roxanne and  
5 BIPI?

6 A I don't know if that's the terminology, but,  
7 yes, it is the highest entity in the pyramid of  
8 companies.

9 Q Here in the United States?

10 A Yes, ma'am.

11 Q And is it true that you were writing a report  
12 on May 30th, 1997, to record the objectives of this  
13 committee?

14 A It was part of the reason why I was writing  
15 the report, yes, to describe the objectives.

16 Q And was one objective of the pricing committee  
17 to review Roxanne and BIPI pricing issues and make  
18 recommendations about Roxane and BIPI pricing issues?

19 MR. WINGARD: Objection; privileged.

20 Instruct the witness not to answer.

21 MS. O'KEEFFE: You're asserting  
22 the privilege as to the purpose of the  
23 committee?

24 MR. WINGARD: As to the purpose --  
25 maybe I misunderstood your question. Would

1           you read back your question?

2                       (Pending question read.)

3           MR. WINGARD: Let me think about  
4           it.

5                       Can you rephrase it?

6           MS. O'KEEFFE: I'll ask the  
7           question again.

8 BY MS. O'KEEFFE:

9           Q       Was an objective of the pricing committee in  
10       1997, of which you were the head, to review Roxanne and  
11       BIPI pricing issues and make recommendations about  
12       Roxanne and BIPI pricing issues?

13           MR. WINGARD: You can answer that.

14           A       That was one of the objectives, yes. Rather  
15       stated that issues, it would be pricing strategy, that's  
16       the way I would formulate the answer. It was to review  
17       Boehringer and ROI pricing strategies.

18 BY MS. O'KEEFFE:

19           Q       Okay. And did the committee make several  
20       recommendations at the end of that meeting as to how  
21       pricing should be handled in the future for both BIPI  
22       and Roxanne?

23           MR. WINGARD: Objection; privileged.

24                       Instruct him not to answer.

25           MS. O'KEEFFE: How is that